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NSG (M) Sdn Bhd v YB Menteri Sumber Manusia, Malaysia & Anor

HIGH COURT (KUALA LUMPUR) — APPLICATION FOR JUDICIAL REVIEW NO 2 OF 2005
LAU BEE LAN J
24 JULY 2010

Administrative Law — Judicial review — Remedies — Certiorari — Recognition of trade union — Allegation of non-compliance with s 71A of the Trade Unions Act — Whether first respondent acted ultra vires and in excess of his power — Failure to consider appeal containing details of nature of applicant's business — Whether first respondent committed jurisdictional error — Whether applicant purportedly could not in any way be construed to be involved in metal industry

Labour Law — Industrial dispute — Recognition of trade union — Competency of second respondent to represent its employees — Competency check — Membership verification — Whether Trade Unions Act contains provisions on competency check — DGIR requested DGTU to establish membership status — Whether DGTU carried out competency check under the Industrial Relations Act 1967 — Industrial Relations Act 1967 ss 2, 9, 18 & 26 — Trade Unions Act 1959 s 71A

The applicant herein applied for an order of certiorari to quash the decision of the first respondent, the Honourable Minister of Human Resources, made under s 9(5) of the Industrial Relations Act 1967 ('IRA'). In this case, the second respondent, Kesatuan Pekerja-Pekerja Perusahaan Logam, had sought official recognition from the applicant. The second respondent lodged a report with the Director General for Industrial Relations Malaysia ('DGIR') that the applicant had still refused to accord recognition. The applicant then wrote to DGIR requesting for membership verification under s 9(3)(c) of the IRA. Before acceding to the request of the DGIR, the applicant studied the constitution of the second respondent relating to membership and realised that the second respondent was not competent to represent its employees. Accordingly, the applicant informed the Industrial Relations Department that their products were rubber-based, nevertheless the list of employees requested by the DGIR was also submitted. The DGIR requested the Director General for Trade Unions ('DGTU') to establish the membership status of the second respondent. The DGTU then conducted the membership verification and informed the DGIR that the membership percentage was 62.55%. The applicant was then advised by DGIR to recognise the second respondent. The applicant however, made an application to postpone the claim for recognition

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as it had doubts on the second respondent's competency to represent the applicant's employees on the ground that the applicant's activities were more of rubber component and not metal. The DGIR then requested the DGTU to decide on the issue of competency of the second respondent to represent the applicant's employees. The DGTU after carrying out the investigation informed the DGIR that the second respondent was competent to represent the applicant's employees. The applicant appealed to the first respondent. The DGIR informed the first respondent about the dispute of the claim for recognition in accordance with s 9(4C) of the IRA and sought the first respondent's decision. The first respondent then made his decision pursuant to s 9(5) of the IRA ordering the applicant to grant recognition to the second respondent. Before this court, the applicant contended that: (a) the first respondent had committed a serious error of law when he failed to comply with s 71A of the Trade Unions Act which required him to consider any appeal made to him and give such decision on the appeal and in failing to do so, the first respondent had acted ultra vires and in excess of his power; (b) the first respondent committed a jurisdictional error when he failed to consider the appeal containing the details of the nature of the applicant's business which were submitted to him by the applicant under s 71A of the Trade Unions Act 1959 (Act); and (c) the applicant purportedly cannot in any way be construed to be involved in the metal industry.

Held, dismissing applicant's application with costs to be taxed:

(1) This court agreed with the first respondent's contention that the appeal provision in s 71A of the Trade Unions Act does not relate to a claim for recognition under the IRA. The DGTU was empowered by s 26(3) of the Act to carry out a membership check. Section 71A(1) does not state that an appeal can be made to the first respondent for decision under s 26(3) of the IRA (see para 14–16).

(2) Further, this court agreed with the first respondent's contention that there is no provision under the Trade Unions Act on a competency check. Under s 9(4B)of the IRA, the DGIR can refer to the DGTU to determine the issue of competency. When the DGTU carries out the competency check, it is exercised under the IRA and the DGTU shall be deemed to carry out the duties and functions relating to the registration of trade unions. The membership check was conducted by the DGTU, an independent third party. The membership check by verification was more authentic as it reflects the actual number of the employees of the applicant who have become members of the second respondent at the time recognition was sought and was made on the basis of the documents in the possession of the second respondent, the genuineness of which has not been disputed by the applicant (see para 17).

(3) There was nothing unreasonable in the conclusion arrived at by the first

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respondent. This court agreed with the first respondent's argument that even if castor wheels are rubber products, the rubber industry workers union had not made a claim for recognition against the applicant. In any event the 'raw material' test was one of the methods by which competency may be determined and which as discussed had been fulfilled, hence the decision of the first respondent 'looked at objectively, [is not] so devoid of any plausible justification that no reasonable body of persons could have reached [it].' (per Abdoolcader SCJ in *Tanjung Jaga Sdn Bhd v Minister of Labour and Manpower & Anor* [1987] 1 MLJ 124 (see para 23).

[Bahasa Malaysia summary

Pemohon di sini memohon untuk satu perintah certiorari untuk membatalkan perintah responden pertama, Menteri Sumber Manusia, yang dibuat di bawah s 9(5) Akta Perhubungan Perusahaan 1967 ('APP'). Di dalam kes ini, responden kedua, Kesatuan Pekerja-Pekerja Perusahaan Logam, telah memohon pengiktirafan rasmi daripada pemohon. Responden kedua membuat laporan kepada Ketua Pengarah Perhubungan Perusahaan Malaysia ('DGIR') bahawa pemohon masih menafikan untuk memberikan pengiktirafan. Pemohon kemudian menulis surat kepada DGIR memohon pengesahan keahlian di bawah s 9(3)(c) APP. Sebelum menerima permohonan daripada DGIR, pemohon meneliti perlembagaan responden kedua berkaitan dengan keahlian dan mendapati bahawa responden kedua tidak kompeten untuk mewakili pekerja-pekerjanya. Dengan itu, pemohon memberitahu jabatan Sumber Manusia bahawa produk mereka adalah berasaskan getah, tetapi senarai pekerja yang dipohon oleh DGIR juga dikemukakan. DGIR memohon kepada Ketua Pengarah Kesatuan Sekerja ('DGTU') untuk memberikan status keahlian kepada responden kedua. DGTU kemudian melaksanakan pengesahan keahlian dan memberitahu DGIR bahawa peratus keahlian adalah 62.55%. Pemohon kemudian dinasihatkan oleh DGIR untuk memberikan pengiktirafan kepada responden kedua. Pemohon, walau bagaimanapun, membuat permohonan untuk menangguhkan permohonan untuk pengiktirafan kerana ia meragui kekompetenan responden dalam mewakili pekerja-pekerja pemohon atas alasan bahawa aktiviti-aktiviti pemohon adalah lebih berkait dengan komponen getah dan bukan besi. DGIR kemudian memohon kepada DGTU untuk membuat keputusan atas isu kekompetenan responden kedua untuk mewakili pekerja-pekerja pemohon. DGTU selepas melakukan penyiasatan memberitahu DGIR bahawa responden kedua adalah kompeten untuk mewakili pekerja-pekerja pemohon. Pemohon merayu kepada responden pertama. DGIR memberitahu responden pertama mengenai pertikaian tuntutan untuk pengiktirafan berikutan s 9(4C) APP APP dan memohon keputusan responden pertama. Responden pertama kemudian membuat keputusan menurut s 9(5) APP memerintahkan pemohon memberikan pengiktirafan kepada responden kedua. Di hadapan mahkamah ini, pemohon menghujah bahawa: (a) responden pertama telah

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melakukan kesalahan undang-undang yang serius apabila dia gagal mematuhi s 71A Akta Kesatuan Sekerja yang memerlukan dia mempertimbangkan apa-apa rayuan yang dibuat kepadanya dan memberikan keputusan ke atas rayuan tersebut, dan jika gagal berbuat demikian, responden pertama telah bertindak secara ultra vires dan melampaui kuasanya; (b) responden pertama melakukan kesilapan bidang kuasa apabila dia gagal mempertimbangkan rayuan yang mengandungi butiran mengenai sifat perniagaan pemohon yang dikemukakan kepadanya oleh pemohon di bawah s 71A Akta Kesatuan Sekerja 1959 ('Akta'); dan (c) pemohon tidak boleh bermaksud dalam apa cara sekalipun ditafsirkan sebagai terlibat di dalam industri logam.

Diputuskan, menolak permohonan perayu dengan kos ditaksir:

(1) Mahkamah ini bersetuju dengan hujahan responden pertama bahawa peruntukan rayuan di dalam s 71A Akta Kesatuan Sekerja tidak berkait dengan permohonan untuk purported di bawah APP. DGTU diberi kuasa oleh s 26(3) Akta untuk melakukan pemeriksaan keahlian. Seksyen 71A(1) tidak menyatakan bahawa rayuan boleh dibuat kepada responden pertama untuk keputusan di bawah s 26(3) Akta (lihat perenggan 14 & 16).

(2) Selanjutnya, mahkamah ini bersetuju dengan hujahan responden pertama bahawa tidak ada peruntukan di bawah Akta Kesatuan Sekerja atas pemeriksaan kekompetenan. Di bawah s 9(4B) APP, DGIR boleh merujuk kepada DGTU untuk memutuskan isu kekompetenan. Apabila DGTU melakukan pemeriksaan kekompetenan, ia dilaksanakan di bawah APP dan DGTU dianggap melaksanakan tanggungjawab dan fungsi berkaitan dengan pendaftaran kesatuan sekerja. Pemeriksaan keahlian dilaksanakan oleh DGTU, pihak ketiga yang bebas. Pemeriksaan keahlian secara pengesahan adalah lebih tulen kerana ia menggambarkan jumlah sebenar pekerja-pekerja pemohon yang telah menjadi ahli responden kedua pada masa pengiktirafan dipohon dan dibuat atas asas bahawa dokumen-dokumen di dalam milik responden kedua, yang ketulenannya tidak dipertikaikan oleh pemohon (lihat perenggan 17).

(3) Tidak ada apa-apa yang tidak munasabah dalam kesimpulan yang dibuat oleh responden pertama. Mahkamah bersetuju dengan hujahan responden pertama bahawa walaupun 'castor wheels' adalah produk getah, kesatuan pekerja-pekerja industri getah tidak membuat tuntutan untuk pengiktirafan terhadap pemohon. Walau apa pun, ujian 'raw material' adalah salah satu cara di mana kekompetenan boleh diputuskan dan seperti yang dibincangkan telah dipenuhi, maka keputusan responden pertama 'looked at objectively, [is not] so devoid of any plausible justification that no reasonable body of persons could have

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reached [it].' (oleh Abdoolcader HMA dalam kes *Tanjung Jaga Sdn Bhd v Minister of Labour and Manpower & Anor* [1987] 1 MLJ 124 (lihat perenggan 23).]

Notes:

For cases on recognition of Nade Union, see 8(1) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 1800–1801.

For cases on remedies, see 1(1) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 301–305.

Cases referred to

Foh Hup Omnibus Co Berhad v Minister of Labour and Manpower & Anor [1973] 2 MLJ 38 (folld)

Tanjong Jaga Sdn Bhd v Minister of Labour and Manpower & Anor [1987] 1 MLJ 124, SC (folld)

Legislation referred to

Industrial Relations Regulations 1980 r 4(1)(c)
Rules of the High Court 1980 O 53
Industrial Relations Act 1967 s 9(3)(c), (4A), (4B), (5)
Trade Unions Act 1959 ss 2(1), 2(2), 26(3), 32, 33, 71A, 72, 74

Balan Nair (Seah Balan Ravi & Co) for the applicant.
Suhaila bt Haron (Senior Federal Counsel, Attorney General's Chambers) for the first respondent.
Sivarasa Rasiah (Daim & Gamany) for the second respondent.

Lau Bee Lan J:

[1] The appellant/applicant NSG (Malaysia) Sdn Bhd ('the applicant'), has appealed against the order of the court dismissing the applicant's application for judicial review with costs to be taxed unless otherwise agreed.

[2] The applicant has applied essentially for an order of certiorari to quash the decision of the first respondent, the Honourable Minister of Human Resources ('the minister/ first respondent') dated 10 May 2005 made under s 9(5) of the Industrial Relations Act 1967 ('the IRA').

[3] The relevant cause papers are:

(a) Application for judicial review (ex parte) dated 27 June 2005 (encl 1);

(b) The statement pursuant to O 53 of the Rules of the High Court 1980 dated 24 June 2005 (encl 2);

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(c) The applicant's supporting affidavit affirmed by Ravendran a/l Thuraisamy on 24 June 2005 ('the applicant's affidavit') (encl 3);

(d) Notice of application for judicial review (Form 111B) dated 25 January 2006 (encl 11);

(e) The first respondent's reply affirmed by Datuk Seri Dr Fong Chan Onn on 28 September 2007 ('the first respondent's affidavit') (encl 19);

(f) The applicant's reply to the first respondent's affidavit affirmed by Ravendran a/l Thuraisamy on 27 May 2007 ('the applicant's second affidavit') (encl 20);

(g) The first respondent's affidavit in reply affirmed by Datuk Seri Dr Fong Chan Onn on 11 August 2008 to the applicant's second affidavit ('the first respondent's affidavit in reply') (encl 20A);

(h) The second respondent's affidavit affirmed by Samsudin bin Usop on 21 October 2005 ('the second respondent's affidavit in reply') (No encl no).

[4] Essentially the facts are as follows. On 7 June 2001 the second respondent sought official recognition from the applicant in Form A dated 7 June 2001(exh NSG1). On 12 June 2001, the applicant received an application from the second respondent, Kesatuan Pekerja-Pekerja Perusahaan Logam. On 22 June 2001 the second respondent informed the the Director General for Industrial Relations Malaysia ('the DGIR') that the applicant still refused to accord recognition and the second respondent lodged a report to the DGIR for action to be taken under s 9(4A) of the IRA (exh FCO1). On 27 June 2001 the applicant wrote to DGIR requesting for membership verification under s 9(3)(c) of the IRA (exhs NSG1-NSG2). On 15 July 2001, the applicant received the letter from the DGIR requesting for a list of employees to be furnished as per *Borang* B for membership check purposes (exh NSG3). Before acceding to the request of the DGIR, the applicant studied the constitution of the second respondent relating to membership ie r 3 (exh NSG4) and realised that the second respondent was not competent to represent its employees. On 24 July 2001 the applicant sent Form B to the JPPM (*Jabatan Perhubungan Perusahaan*) and informed that their products are rubber-based (more of a rubber industry), nevertheless the list of employees requested by the DGIR was also submitted (exh NSG5).

[5] On 4 December 2001, the DGIR requested the Director General for Trade Unions ('the DGTU') to establish the membership status of the second respondent in accordance with reg 4(1)(c) of the Industrial Relations Regulations 1980 (exh NSG6). On 17 December 2001 the applicant received a letter from the DGTU stating that a membership verification would be conducted shortly, and in early 2002 the DGTU, Selangor/Wilayah Persekutuan & Pahang informed the applicant a membership verification

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would be conducted on 8 June 2002 at the office of the second respondent (exhs NSG6, NSG7 and NSG8). On 29 January 2002 the DGTU informed the DGIR that the membership percentage is 62.55% after membership check by way of verification was conducted. The applicant received a letter dated 3 June 2002 (exh NSG9) from the DGIR stating that 62.55% of the employees were members of the second respondent as at 7 June 2001 and the applicant was therefore advised to recognise the second respondent. The applicant was then advised that the DGIR had committed an error of law in not obtaining the opinion of the DGTU on the competency of the second respondent (exh NSG10). On 12 June 2002 the applicant made an application to postpone the claim for recognition as it had doubts on the second respondent's competency to represent the applicant's employees on the ground that the applicant's activities are more of rubber component and not metal. On 25 July 2002 the DGIR requested the DGTU to decide on the issue of competency of the second respondent to represent the applicant's employees in accordance with s 9(4B) of the IRA (exh NSG11). On 31 July 2002 the DGTU directed the branch office to carry out investigation on the applicant's business activities to determine whether the second respondent was competent to represent the applicant's employees (exh FCO4).

[6] On 21 August 2002, the DGTU Penang, Kedah & Perlis (Madam Tan Hooi Tin) visited the premises of the applicant to investigate whether the applicant's business activities were in accordance with reg 3 of the second respondent's regulations. The applicant alleged that it provided all the necessary information and written details about the activities of the applicant (exh NSG13) but the said director was not interested and only advised the applicant to grant recognition to the second respondent. On 5 November 2002 the DGIR informed the second respondent that the issue of competency had been referred to DGTU. On 14 November 2002, the Assistant Director for Industrial Relations, Penang, Mr Hoe Lean Fatt, visited the premises of the applicant (exh NSG14) and also advised the applicant to grant recognition to the second respondent.

[7] On 8 April 2003 the DGTU informed the DGIR that investigation on the applicant's activities had been carried out and assistance from a panel of advisors from MIDA and the Chemist Department was sought (exh FCO6). On 8 May 2003 the DGTU informed the DGIR that the second respondent was competent to represent the applicant's employees (exh FCO7).

[8] On 12 June 2003, the applicant received a letter from the DGIR stating that the DGTU has decided that the second respondent was competent to represent the applicant's employees and that 62.55% of the employees of the applicant were members of the second respondent, and hence the applicant

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should grant recognition to the second respondent and if it did not do so, action under s 9(4c) of the IRA would be taken (exh NSG15).

[9] On 25 June 2003 the applicant appealed to the DGIR to postpone the claim for recognition as there were some doubts that needed to be clarified. The applicant appealed to the first respondent under s 71A of the Trade Unions Act 1959 ('the Trade Unions Act') regarding the decision conveyed by the DGIR and the appeal was submitted on 16 July 2003 (exh NSG17) and a copy of the appeal was given to the DGIR on 24 July 2003 (exh NSG19).

[10] On 27 February 2004 the DGIR invited the applicant to attend a discussion on 10 March 2004 to discuss further on the claim for recognition. On 5 May 2005 the DGIR informed the first respondent about the dispute of the claim for recognition in accordance with s 9(4C) of the IRA and sought the first respondent's decision. On 10 May 2005 since the dispute between the applicant and the second respondent could not be resolved, the first respondent then made his decision in Form D pursuant to s 9(5) of the IRA. On 16 May 2005 the first respondent's decision was communicated to the applicant (exh NSG21). On 20 May 2005, the applicant received a letter signed by Mr Kesavan informing that the first respondent had made a decision under s 9(5) of the IRA ordering the spplicant to grant recognition to the second respondent (exh NSG21).

[11] The court has considered the written submissions of learned counsel for the applicant (encl 31), the learned SFC for the first respondent (encl 27) and of learned counsel for the second respondent (encl 29). The court's findings include the following.

[12] Summarily the applicant's contentions are:

(a) that the first respondent has committed a serious error of law when he failed to comply with s 71A of the Trade Unions Act which requires him to consider any appeal made to him and give such decision on the appeal and in failing to do so, the first respondent has acted ultra vires and in excess of his power (first ground);

(b) that the first respondent committed a jurisdictional error when he failed to consider the appeal containing the details of the nature of the applicant's business which were submitted to him by the applicant under s 71A of the Trade Unions Act. It is contended that instead the first respondent only considered the DGIR and DGTU's recommendations and did not provide any reasons for arriving at the decision to order the accordance of recognition (second ground); and

(c) that the applicant purportedly cannot in any way be construed to be involved in the metal industry (third ground).

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[13] Before proceeding with the merits of the applicant's appeal it is necessary to state the law applicable to the issue before this court which has been spelled out in paras 6.3-6.15 of the first respondent's submission as follows:

6.3 Section 9(2) of the IRA, Act 177 provides for the trade union to serve on the employer in writing a claim for recognition.

6.4 Section 9(3) of the IRA, Act 177 provides that an employer who has been served with such a claim may after 21 days after service of the claim:

(a) accord recognition; or

(b) if recognition is not accorded notify the trade union concerned in writing the grounds for not according recognition; or

(c) apply in writing to the DGIR to ascertain whether the workmen in respect of whom recognition is being sought are members of the trade union.

6.5 If the trade union received a notification under subsection (3)(b) of the IRA, Act 177 or where the employer concerned fails to comply with subsection (3) of the IRA, Act 177 the trade union may report to the DGIR in writing (section 9(4)).

6.6 Section 9(4A) of the IRA, Act 177 provides that when the DGIR received an application under section 9(3)(c) or a report under section 9(4) the DGIR is empowered to take steps or make inquiries necessary to resolve the matter.

6.7 In order to perform his function under section 9(4B)(a) the DGIR is vested with the powers to require the trade union, the employer or trade union of employers to furnish any information he deems necessary.

6.8 The DGIR is also given the discretion by section 9(4B) (b) of the IRA, Act 177 to refer to the DGTU for the DGTU's decision on any question of the competence of the trade union to represent any workmen in respect of whom recognition is sought.

6.9 Section 9(4C) of the IRA, Act 177 provides that if the DGIR cannot resolve the matter pursuant to section 9(4A) of Act 177 he shall notify the Minister.

6.10 The Minister is required by section 9(5) of the IRA, Act 177 to give his decision either to accord recognition or otherwise.

6.11 Whereas in the Trade Unions Act, Act 262, section 26(3) states that in a situation where a trade union has served a claim for recognition, the DGIR may request the DGTU to carry out a membership check in the manner prescribed by Regulations 63, 64, 65 and 66 of Trade Unions Regulations ('TU Regulations'). This is for the purpose of ascertaining the percentage of workmen in respect of whom recognition is being sought, who are members of the union making the claim.

6.12 The DGTU may in writing notify the trade union making a claim for recognition that a membership check would be conducted either by membership verification or by a secret ballot. A copy of such notification shall be sent to the employer (Regulation 63 of TU Regulations).

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6.13 Both the employer and the trade union are to assist the DGTU with information as he may require to enable the DGTU to conduct the membership check (Regulation 64 of TU Regulations).

6.14 Regulation 65 of the TU Regulations prescribes the formula to ascertain the percentage of membership as follows:

a Membership Verification

Total number of valid members as at the date of the claim _____ x 100% total number of workmen in respect of whom recognition is being sought at the date of the claim

b Membership check by secret ballot

number of votes indicating membership _____ x 100% number of workmen entitled to vote

6.15 The DGTU shall notify the DGIR the result of the membership check (Regulation 66 of TU Regulations).

FIRST GROUND

[14] The first respondent contends that the appeal provision in s 71A of the Trade Unions Act does not relate to a claim for recognition under the IRA. I find there is merit in this contention. Section 71A of the Trade Unions Act, inter alia, states:

(1) Any person who is dissatisfied with any opinion, order, declaration, refusal, cancellation, withdrawal, director or decision, as the case may be, given, made or effected by the Director General under any of the following provisions:

(a) section 2(2);

may, within thirty days from the date of the opinion, order, declaration, refusal, cancellation, withdrawal, direction or decision of the Director General, appeal against the same to the Minister, in such manner as may be prescribed by regulations.

[15] Section 2(2) of Trade Unions Act is with regard to definition of 'trade union' in sub-s (1) and ss 32 (Amalgamation), 33 (Transfer of engagements), 72 (Formation of Federation of Trade Unions) and 74 (Affiliation with registered federation of trade union) and is not related with issue of competency of the trade union.

[16] The DGTU is empowered by s 26(3) of the Trade Unions Act to carry out a membership check. Section 71A(1) does not state that an appeal can be made to the first respondent for decision under s 26(3) of the Trade Unions Act.

[17] Further I agreed with the first respondent's contention there is no

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provision under the Trade Unions Act on competency check. Under s 9(4B) of the IRA, the DGIR can refer to the DGTU to determine the issue of competency. When the DGTU carries out the competency check, it is exercised under the IRA and the DGTU shall be deemed to carry out the duties and functions relating to the registration of trade unions. The first respondent in paras 32, 34, 38–41 of the first respondent's affidavit has stated in arriving at his decision on 10 May 2005 he has taken into consideration all the relevant facts and the impartiality of the DGIR and DGTU in the matter. The membership check was conducted by the DGTU, an independent third party. I agreed with the first respondent's submission that the membership check by verification is more authentic as it reflects the actual number of the employees of the applicant who have become members of the second respondent at the time recognition was sought and was made on the basis of the documents in the possession of the second respondent, the genuineness of which has not been disputed by the applicant. Thus I find the applicant's contention on the first ground is without merit.

SECOND AND THIRD GROUNDS

[18] These two grounds are dealt with together as they are linked. I find the first respondent has given his reasons for his decision. This is evident from the first respondent's affidavit and first respondent's affidavit in reply. In relation to the applicant's contention that the applicant did not raise the issue of the competency of the second respondent to represent the employees of the applicant and the failure of the DGIR to discharge his duty in accordance with law (paras 3–5 of the applicant's second affidavit), the first respondent averred 'Ketua Pengarah Perhubungan Perusahaan ('KPPP') tidak gagal dalam menjalankan tugas-tugasnya mengikut undang-undang. KPPP akan meminta Ketua Pengarah Kesatuan Sekerja ('KPKS') untuk menentukan isu kelayakan apabila diminta oleh Pemohon. Pemohon telah meminta KPPP menentukan isu kelayakan Responden Kedua melalui surat bertarikh 12 Jun 2002. Seterusnya KPPP telah memohon kepada KPKS untuk menentukan isu kelayakan Responden Kedua'.

[19] The applicant alleged in para 11 of the affidavit that Madam Tan Hooi Tin failed to consider the explanation and the document (exh NSG13) given on the business activities of the applicant as 'pengeluaran Pemohon iaitu 'Castor Wheel & Rubber Wheel' kedua-duanya adalah pengeluaran getah' where at p 2 exh NSG13 it is stated 'Castor Wheels consist of mounting unit which is called Body Castor and rubber wheels. Body castors are made of parts and components. Some of the major parts are manufactured in NSG (M) at Metal unit whilst other small unit parts are subcontracted to local contractors. Raw material for parts production steel coils of SPHC or SPCC type that is purchase locally. Rubber wheels consist of two types — entire rubber wheels

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and center wheel type. Raw material for manufacturing rubber wheels comprise of natural and synthetic rubber and chemicals. The processing of the rubber as to manufacture rubber wheels will be carried out at rubber unit. Assembling of parts and component to make body castor will be done at assembly unit. Components are purchased locally and imported from overseas mainly Japan, Taiwan & China. Components are ready made to assemble to our product with no other additional process is required. Rubber wheels will be assembled together with the body castor to become castor wheels — finished product'; her conclusion that the applicant's product 'dari besi (56.25%), getah asli (2.8%), plastik kimia dan synthetic rubber (34.86%) dan lain-lain (6.09%)' is illogical; and exh NSG13 at p 3 states under heading 'Analysis of Raw Material Input' that the raw material used is rubber (36.1%), metal (24.1%) and the balance are 'assembly and packing' (36.0% and 3.8%) whilst at p 6 under heading 'Processes, 'On the average of manufacturing series of castor wheel and rubber wheels at NSG(M) facility constitute of 51% of involvement of rubber activities, 24% of metal processes, 20% of assembling and 5% of packing'.

[20] In response to para 11 of the applicant's second affidavit, the first respondent averred 'berdasarkan kepada maklumat yang diperolehi sewaktu siasatan dijalankan, didapati bahan mentah yang digunakan terbahagi kepada bahan mentah untuk rubber processing, metal stamping process, assembly process dan packing process. Seterusnya saya menyatakan bahawa JHEKS (Jabatan Hal Ehwal Kesatuan Sekerja) memutuskan Responden Kedua layak mewakili Pemohon berdasarkan kepada fakta bahawa 56.25% bahan mentah yang digunakan adalah besi dan 87% barangan keluaran akhir Pemohon adalah castor wheel dan 13% sahaja rubber wheel'. In the light of the reasons proffered by the first respondent, I am of the view that the applicant's contention that the first respondent did not give reasons for his decision is misconceived.

[21] The second respondent has basically adopted the contentions of the first respondent. In relation to the third ground to reiterate I am of the view that the claim of the applicant is flawed for the reasons stated in paras 8.1 and 8.2 above. In addition, I find the first respondent's decision is not unreasonable in the Wednesbury sense because as correctly submitted by learned counsel for the second respondent if one compares the pricing for 'Raw Material for Rubber Processing' (RM8,056,181), 'Raw Material for Metal Stamping Process' (RM5,376,853), it appears that metal component is less based on pricing. However 'Raw Material for Assembly Process' where all the components in the schedule are metal comprising 'axle, nut, washer, truck rivet, steel ball, brake plate, stopper pedal, ball race, spacer & supporting pipe and other accessories' except for 'plastic wheels' and J & P stem', the pricing is RM8,027,331 and therefore if one looks at the overall picture, it is not unreasonable for the first

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respondent to conclude that metal was the main component. Further based on the averment in para 18 of the first respondent's affidavit, 'JHEKS mendapati keluaran Pemohon ialah 87% castor wheel dan 13% rubber wheel untuk digunakan dalam pengeluaran kenderaan untuk mengangkut mesin, peralatan dalam kilang atau dalam rumah. Dari siasatan tersebut juga didapati bahan mentah yang digunakan untuk menghasilkan produk terdiri daripada besi (56.25%), getah asli (2.8%), plastics/chemicals/synthethic rubber (34.86%) dan lain-lain (6.09%)', I agreed with the second respondent that it is not unreasonable for the first respondent to conclude that the appropriate union is the second respondent. Furthermore exh SU11 in the second respondent's affidavit, is a true picture of the castor wheel illustrates the first respondent's averment that the second respondent is competent to represent the applicant based on the fact that '56.25% bahan mentah yang digunakan adalah besi dan 87% barangan keluaran akhir … adalah castor wheel dan 13% sahaja rubber wheel'. In addition, another factor which is relevant to the Minister's consideration is from the perspective of the number of employees involved found in para 17 of the second respondent's affidavit '[S]eramai 133 (73.48%) orang dari jumlah 181 orang pekerja Pemohon adalah terlibat dalam pemasangan barang logam. Manalala hanya 48 (26.5%) pekerja terlibat dalam pemasangan komponen roda castor di mana roda tersebut terdiri dari komponen-komponen getah dan logam'.

[22] The applicant took objection that the investigation by JHEKS on the business activities of the applicant was assisted by a panel of advisors from MIDA and the Chemist Department by querying why the panel did not get in touch with the applicant or visit the applicant's premises to see the processes involved. I agreed with learned counsel for the second respondent that it is entirely within the power of the DGTU to seek their help. Support for this proposition is found in *Tanjong Jaga Sdn Bhd v Minister of Labour and Manpower & Anor* [1987] 1 MLJ 124 at p 129 H–I right where the Supreme Court stated 'In exercising his functions in this regard, the registrar had an unfettered discretion which was subject to a duty to act responsibly in the *Wednesbury* sense … that is to say, if a decision-making body comes to its decision on no evidence or comes to an unreasonable finding — so unreasonable that a reasonable person would not have come to it — then the courts will interfere'. Further support is found in the case of *Foh Hup Omnibus Co Berhad v Minister of Labour and Manpower & Anor* [1973] 2 MLJ 38. In this case, a trade union had claimed recognition and when the appellant company refused to accord recognition, the Minister directed the Registrar of Trade Unions to carry out a membership check and thereafter decided to accord recognition to the trade union. On appeal to the Federal Court by the appellant company against the refusal of its application for certiorari to quash the Minister's decision, in dismissing the appeal, the Federal Court held 'The Minister had a complete discretion as to the manner in which he was to act in

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settling a dispute as to recognition and in the circumstances of this case, there had been no breach of the rules of natural justice'.

[23] To reiterate on the factual matrix of this case I find there is nothing unreasonable in the conclusion arrived at by the first respondent. To conclude I also agreed with the first respondent's argument that even if castor wheels are rubber products, the rubber industry workers union has not made a claim for recognition against the applicant. In any event the 'raw material' test is one of the methods by which competency may be determined and which as discussed has been fulfilled, hence the decision of the first respondent 'looked at objectively, [is not] so devoid of any plausible justification that no reasonable body of persons could have reached [it]'. (per Abdoolcader SCJ in *Tanjong Jaga Sdn Bhd* at p 130 A–B).

[24] For the foregoing reasons I find that the grounds canvassed by the applicant in urging this court to allow the applicant's application for an order of certiorari to quash the first respondent's decision do not warrant the court to intervene and accordingly the applicant's application is dismissed with costs to the first and second respondents to be taxed unless otherwise agreed.

Applicant's application dismissed with costs to be taxed.

Reported by Ashgar Ali Ali Mohamed